

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD MASCELLI and TRACY	:	CIVIL ACTION
MASCELLI, h/w	:	
	:	
vs.	:	
	:	
THOMAS MILLER and CHRISTINE MILLER	:	NO. 02-CV-3005

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, upon consideration of Defendants, Thomas and Christine Miller's Motion to Dismiss based upon improper venue, it is hereby ORDERED that pursuant to 28 U.S.C. §1406, this matter is DISMISSED.

BY THE COURT:

\_\_\_\_\_  
J.

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, upon consideration of Defendants, Thomas and Christine Miller's Petition to Transfer Venue, and any responses thereto, it is hereby ORDERED that said Petition is GRANTED and venue of this matter is transferred to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. §1406.

BY THE COURT:

\_\_\_\_\_  
J.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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THOMAS MILLER and CHRISTINE MILLER	:	NO. 02-CV-3005

**DEFENDANTS, THOMAS MILLER and CHRISTINE MILLER'S**  
**PETITION TO DISMISS OR TRANSFER BASED UPON IMPROPER VENUE**

Defendants, Thomas Miller and Christine Miller, by and through their undersigned attorneys, hereby move this Honorable Court pursuant to 28 U.S.C. §1406 to either dismiss Plaintiffs' Complaint or, in the alternative, transfer venue of this matter to the United States District Court for the Middle District of Pennsylvania, and in support thereof aver as follows:

1. Plaintiffs, Richard and Tracy Mascelli are residents of Lewes, Delaware.
2. Richard Mascelli alleges personal injuries as a result of a motor vehicle accident that occurred at the intersection of State Route 1 and State Route 24, Rehobeth, Delaware. See Exhibit "A," Plaintiffs' Complaint.
3. Defendants, Thomas and Christine Miller are individuals who reside at 358 Granite Street, Cornwall, Lebanon County, Pennsylvania. See Exhibit "A."
4. Defendants, Thomas and Christine Miller were served at their home address of 358 Granite Street, Cornwall, Lebanon County, Pennsylvania. See Exhibit "B," proof of service.
5. Defendants filed an Amended Answer to Plaintiffs' Complaint on August 8, 2002. A true and correct copy of Defendants' Amended Answer is attached hereto as Exhibit

“C.”

6. In their Amended Answer to Complaint, Defendants assert their objection to venue of this matter in the United States District Court for the Eastern District of Pennsylvania.

7. Pursuant to 28 U.S.C. §1391(a), this action can only be brought in a district where Defendants reside (inasmuch as all Defendants reside in the same state), or a district in which a substantial part of the events giving rise to the claim occurred. In this case, Defendants reside in Lebanon County which is located in the Middle District of Pennsylvania’s United States District Court. In addition, this cause of action arose in Delaware which obviously is not in the Eastern District of Pennsylvania.

8. This matter has been filed in the wrong district of Pennsylvania and, accordingly, Defendants move this Honorable Court pursuant to 28 U.S.C. §1406(a) for dismissal or, in the alternative, transfer to the Middle District of Pennsylvania.

9. Moving counsel has attempted to amicably resolve the dispute over venue by way of correspondence dated July 19, 2002 (see Exhibit “D”) along with a phone call to Plaintiffs’ attorney on July 17, 2002. To date, Plaintiffs have not responded to Defendants’ requests for change of venue.

WHEREFORE, Defendants, Thomas Miller and Christine Miller, respectfully request that this Honorable Court grant their Motion and either dismiss this matter or, in the alternative, transfer venue to the United States District Court for the Middle District of Pennsylvania pursuant to 28 U.S.C. §1406.

MARGOLIS EDELSTEIN

BY: \_\_\_\_\_  
JOHN A. LIVINGOOD, JR., ESQUIRE  
Attorney for Defendants,  
Thomas Miller and Christine Miller  
I.D. No. 68996  
The Curtis Center - Fourth Floor  
Independence Square West  
Philadelphia, PA 19106-3304  
(215) 922-1100

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS’  
PETITION TO DISMISS OR TRANSFER BASED UPON IMPROPER VENUE**

This matter arises out of a motor vehicle accident that occurred in Rehobeth Beach, Delaware. See Exhibit “A,” Plaintiffs’ Complaint. Plaintiff, Richard Mascelli alleges personal injuries as a result of this accident. Mr. Mascelli is a resident of Delaware. Defendants, Christine and Thomas Miller are individuals who both reside in Cornwall, Lebanon County, Pennsylvania. Plaintiffs assert diversity jurisdiction pursuant to 28 U.S.C. §1332 as Plaintiffs and Defendants are residents of different states and Plaintiffs allege that their damages exceed \$75,000.00.<sup>1</sup> The current venue of this matter is improper. 28 U.S.C. §1391(a) states:

A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in:

- (1) a judicial district where any defendant resides, if all defendants reside in the same State,

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<sup>1</sup>Defendants do not concede, by any means, that Plaintiffs’ claim has any value approaching \$75,000.00. Plaintiff incurred \$3,371.00 in medical bills as a result of this accident and was seen in the emergency room and treated with his family physician on three occasions for lumbar and trapezius strains. Plaintiff saw a physical therapist seven times and also treated with a chiropractor for his alleged injuries from August, 2000 to January, 2001. Plaintiff alleges nothing more than soft tissue strains and sprains of the neck and back and it is respectfully submitted that the potential value of this claim falls far below this Honorable Court’s \$75,000.00 jurisdictional minimum.

- (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or
- (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

In this case , jurisdiction is founded upon diversity. All Defendants reside in the same state. Thomas and Christine Miller reside in Lebanon County, Pennsylvania and therefore they reside in the Middle District of Pennsylvania. All of the events giving rise to Plaintiff's claim occurred in Delaware. In fact, Plaintiffs reside in Delaware. There is nothing to support venue in the Eastern District of Pennsylvania.

The issue of improper venue has been preserved in Defendants' Amended Answer to Complaint which is attached hereto as Exhibit "C." See Sherman v. Moore, 86 F.R.D. 471 (S.D.N.Y. 1980).

Pursuant to 28 U.S.C. §1406(a), this Honorable Court is vested with the authority to either dismiss this matter or transfer the case to an appropriate district. Venue is proper in the Middle District of Pennsylvania where Defendants reside.

For the foregoing reasons, Defendants, Thomas Miller and Christine Miller respectfully request that this Honorable Court grant their Petition and either dismiss this matter or, in the alternative, transfer venue to United States District Court for the Middle District of Pennsylvania.

Respectfully submitted,  
MARGOLIS EDELSTEIN

BY: \_\_\_\_\_  
JOHN A. LIVINGOOD, JR., ESQUIRE  
Attorney for Defendants,  
Thomas Miller and Christine Miller  
I.D. No. 68996  
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**CERTIFICATE OF SERVICE**

I, JOHN A. LIVINGOOD, JR., ESQUIRE, do hereby certify that a true and correct copy of Defendants, Thomas Miller and Christine Miller's Petition to Dismiss or Transfer Based upon Improper Venue was sent to counsel below named via first class United States mail, postage prepaid on August 15, 2002:

Jeffrey M. Rosenbaum, Esquire  
**Rosenbaum & Associates**  
1818 Market Street, Suite 3200  
Philadelphia, PA 19103-3611

MARGOLIS EDELSTEIN

BY: \_\_\_\_\_  
JOHN A. LIVINGOOD, JR., ESQUIRE  
Attorney for Defendants,  
Thomas Miller and Christine Miller